IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.210 OF 2007
IN
COMPANY PETITION NO.569 OF 2006

M/s. Regrace Beauty Concepts
Pvt. Ltd. .... Appellants
Vs.
Vinay Shourie .... Respondent

WITH

APPEAL NO.235 OF 2007
IN
COMPANY PETITION NO.570 OF 2006

M/s. Regrace Beauty Concepts
Pvt. Ltd. .... Appellants
Vs.
Anila Shourie .... Respondent

Shri Anant C. Singh for the Appellants in
both the Appeals.
Shri Utpal Thakkar i/b Ms Neeta V. Parikh
for the Respondent in both the Appeals.

CORAM: R.M.S. KHANDEPARKAR &
D.G. KARNIK, JJ.

DATED: APRIL 10, 2007

P.C:

1. Heard. Since common question of law and facts arise in both these appeals, they were heard together and are being disposed of by this common order.

2. Both these appeals arise from the order dated 21-2-2007 whereby the respective company petitions have been admitted and the same are ordered to be advertised in newspapers. It is the contention on behalf of the appellants that the learned Company Court failed to take note of the fact that hundis were never presented and

the goods in fact were never supplied to the appellants and therefore there was no subsisting liability of the appellants/company to the respondents. Perusal of the impugned orders discloses that the learned Company Court after taking into consideration the reply and the materials annexed to the reply, has arrived at a clear finding that there is no substantive defence raised by the appellants and no bona fide dispute exists between the parties in relation to the subsisting liability of the appellants to the respondents and failure on the part of the appellants to clear the same in spite of a clear statutory notice dated 1-7-2006 served upon the appellants. Plain reading of the reply which was filed by the appellants in answer to the petitions for winding up clearly discloses clear admission on the part of the appellants that the appellants did not file any reply to the statutory notice dated 1-7-2006. Only defence which was sought to be raised was that similar notice was issued earlier on 6-4-2006, addressed to the Director of the company and the same was replied and therefore it was not necessary for the appellants/company to send its reply to the notice dated 1-7-2006. The law on the point is very clear. Once a statutory notice in terms of Section 434 of the Companies Act, 1956 is served upon the company, calling upon the company to clear the dues failing which winding up proceedings would be initiated and if the company fails to reply to the said notice, it

is to be presumed that the company has failed to comply with its statutory obligation under the said Act and it could warrant winding up proceedings against such company. That apart, even when the actual petition was filed, the appellants/company was not able to satisfy the learned Company Court that for justifiable reason there was failure on the part of the company to reply to the statutory notice as well as that there is no bona fide dispute between the parties as regards the claim made by the respondents against the appellants/company. The grievance about the non-presentation of the hundis by itself cannot absolve the appellants from their liabilities. Nothing prevented the appellants from paying the dues in terms of the claim made by the respondents, when at least the notice in that regard was served or at least to show their bona fide when the petition had come up for hearing by making the initial payment in that regard. Even today when the appeals came up for hearing, the learned Advocate for the appellants was asked as to whether the appellants would deposit the amount. However, the appellants did not show any willingness to deposit the said amount. In the circumstances, we do not find any infirmity or illegality in the impugned orders which could warrant interference in the appeals. Hence the appeals fail and are rejected.

(D.G.Karnik, J.) (R.M.S.Khandeparkar, J.)

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